

What's New in the Law?

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Topics to be Covered

- 1. COVID-19.
- 2. ADA/504.
- 3. Behavior/Discipline.
- 4. Child Find.
- 5. Eligibility.
- 6. FAPE.
- 7. Meaningful Parent Participation.
- 8. Liability.

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COVID-19

- The law is still in effect.
- But there is a “higher law”: you can’t do what you can’t do.
- Remember three fundamentals: 1) serve every child; 2) individualize; 3) solicit and value parental input.
- Document your efforts and the roadblocks you encounter.
- When this is all over, there will be legal challenges arising out of how you handled the COVID crisis.
- The “unwritten rule” will be applied, but be sure your documentation reflects the reasonableness and creativity of your efforts.

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Will Compensatory Services Be Owed?

- During the forced school shutdown, IEP goals do not change, but progress will almost certainly be slower.
- Requests for compensatory services will need to be analyzed case by case—just like it always is with special education.

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Meeting Timelines

- Meeting the timeline for completion of an evaluation is important.
- Doing the evaluation properly is more important.
- If you cannot meet the timeline, document the reasons and communicate with the parent about it.
- Use your school's Prior Written Notice form—but don't let the form own you. Own the form. Don't just check boxes. Create a narrative.

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ADA/504

- We continue to see a lot of litigation over disability discrimination.
- Many cases allege "retaliation" as a form of disability discrimination: 1) I engaged in "protected activity"; 2) I suffered an "adverse action"; and 3) those two are causally connected—they punished me for exercising my rights.
- Several courts have held that the filing of a child abuse report is an "adverse action."
- Notice also many cases involving extracurricular activities.

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Behavior/Discipline

- You have a lot of discretion in writing a BIP, but make sure that parents are part of the process.
- BIPs are about positive strategies and supports to PREVENT misconduct. You identify the behavior that impedes learning, and develop strategies for reducing or eliminating it.
- BIPs do not have to “authorize” police involvement, physical restraint, or short term consequences that are not a “change of placement.”
- Monitor for progress.

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Child Find

- You have a duty to make a referral upon a “suspicion” of a need for specially designed instruction due to a disability.
- Two parts to that: a disability and a need for specially designed instruction.
- Many kids need special help, but not due to a disability. They are not eligible under IDEA.
- Once the “suspicion” is in place, the school must take action.

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Parent Referrals

- When the parent makes a referral, there are only two legally proper responses.
- First: here is our consent form. Please sign it and we will begin the evaluation process. And here is an explanation of the Procedural Safeguards.
- Second: here is a Prior Written Notice form, explaining why we are refusing to do an evaluation. And here is an explanation of the Procedural Safeguards.
- Be generous in your interpretation of when a “referral” is being made.

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Eligibility

- Most of the court cases dealing with eligibility are about “educational need.”
- Problems at home that do not show up at the school do not demonstrate a need for special education services.
- But note: the failure to attend school may be evidence of a need, even for a bright student who does well when in attendance.
- The best expert witnesses on “educational need” are classroom teachers with experience serving the student.

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FAPE

- Since *Endrew F.* there have been many cases about what FAPE means, particularly for low-achieving students.
- SCOTUS set the standard: an IEP reasonably calculated to enable the student to make “progress appropriate in light of the child’s circumstances.”
- SCOTUS encouraged an IEP with goals that are “appropriately ambitious” with “challenging objectives.” Those standards should be applied in IEP Team meetings. In court, the standard is “progress appropriate in light of the child’s circumstances.”

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Meaningful Parent Participation

- This remains the standard courts apply to your IEP Team meetings, your compliance with parental procedural rights (notice, consent, confidentiality) and your general interaction with parents.
- The “unwritten rule” is in full force here: who was acting reasonably? Courts apply this to both sides.

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Liability

- Many cases seek to impose liability for physical and/or emotional injuries.
- State laws often protect schools and school personnel from liability, thus we see cases brought under federal law.
- “Respondeat superior” is available in most Circuits under 504/ADA, meaning that the district can be liable for the actions of an employee.

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